SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-553

ESTHER GOODYEAR,
Petitioner,

vs.

THE GATES RUBBER COMPANY,
Respondent.

BRIEF OF RESPONDENT THE GATES RUBBER COMPANY OPPOSING CERTIORARI

DAYTON DENIOUS
Attorney for Respondent
2220 First National Bank Building
621 Seventeenth Street
Denver, Colorado 80202

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PROCEEDINGS BELOW

Petitioner Mrs. Goodyear, as plaintiff, brought a Title VII suit against respondent Gates in the District Court for the District of Colorado claiming that Gates discriminated against her because she was female. The case was tried without a jury. The District Court held against Mrs. Goodyear. There was no motion for new trial, but Mrs. Goodyear appealed to the Court of Appeals, which affirmed.

There was no petition for rehearing but about the ninetieth day after the decision of the Court of Appeals Mrs. Goodyear petitioned this Court for Certiorari invoking 28 U.S.C. §1254(1).

DECISIONS OF DISTRICT COURT AND COURT OF APPEALS

The decision of the District Court (Findings of Fact Conclusions of Law and Judgment of Dismissal), reported only in 6 E.P.D. ¶8996 (1973) and the unreported per curiam opinion of the Court of Appeals affirming the District Court are attached to the Petition for Certiorari as Appendix A and Appendix B respectively. As part of its brief in the Court of Appeals respondent Gates attached (and now supplies this Court as Appendix 1 to this brief) a copy of the District Court's decision annotated to some of the pertinent portions of the trial transcript.

JURISDICTION

The jurisdiction of the District Court as well as the jurisdiction of the Court of Appeals and the Supreme Court was and is conceded by respondent.

QUESTIONS PRESENTED

1. Whether the Supreme Court should now change the practice in U. S. District Courts so that if a judge, concededly acting within his discretion, denies a motion to maintain a class action he must volunteer a written or oral justification of his denial even though neither party requests it, and even though he has previously pointed out for the guidance of counsel the standards and criteria which he will apply regarding a class action.

2. Whether this Court should review the correctness of the trial judge's findings and reexamine one of his rulings on the evidence.

STATEMENT OF THE CASE

The Petition's "Statement of the Case" is not directed to the facts but merely to contentions, e.g.: "petitioner alleged" (pet. 3); "at trial petitioner's evidence showed the following" (pet. 3); "petitioner contends" (pet. 4); "other evidence was that" (pet. 5); the testimony "tended to establish" (pet. 5); "petitioner's evidence was that" (pet. 6); "it is clear from the evidence that" (pet. 6); "there was evidence that" (pet. 6).

Here are the pertinent facts:

The trial of this case started October 1 and ended October 9, 1973. There are over 800 pages of trial transcript. There was a pre-trial order in which the issues and the contentions of the plaintiff Mrs. Goodyear were all spelled out. The form of this pre-trial order was per the stipulation of Mrs. Goodyear's counsel.

The Gates Rubber Company has a factory and its main offices in Denver. In this company as in nearly every business or governmental establishment in the United States the women, who have secretarial and clerical skills, generally hold secretarial, stenographic and clerical jobs and the men, who have engineering or other specialized training, generally hold the executive and other managerial positions, which are on the average better paying jobs.

Mrs. Goodyear first became employed by Gates in 1960. She had a high school education and she had some previous work experience as a waitress and in some clerical jobs. At Gates she worked in the office as distinguished from the factory and she did clerical work and then stenographic or secretarial work.

Mrs. Goodyear was employed at Gates for almost eleven years. Most of the time she was in Industrial Belt Sales where her supervisor was Mr. Custer. Here she acted

as a secretary and she also tabulated reports from the field, work which she characterizes as "market research" but which was the type of work done by other secretaries and was and is now handled by a secretary in Mr. Custer's department who succeeded Mrs. Goodyear.

Mrs. Goodyear became dissatisfied with her job and the prospects in Mr. Custer's department. She was offered and she accepted a job with Mr. Kenney in Private Brand Tire Sales. This job had a higher classification and the starting rate represented a small increase in pay for Mrs. Goodyear.

Mrs. Goodyear did such a horrible job for Mr. Kenney that after a few months he informed her that he would not employ her after April 30 and in the meantime she was free to spend whatever time she wanted locating another position in the Company. He replaced Mrs. Goodyear with another woman.

Mrs. Goodyear's availability was communicated to all those in the company who had an opening for a person in her classification. Some interviewed but none would employ her. All selected some other woman.

On April 30, the deadline, a position opened up with Mr. Henderson in MRG Technical. This position was "Steno-A" which was a lower classification and involved a cut in pay. Mrs. Goodyear accepted the position with Mr. Henderson.

Mrs. Goodyear soon developed a dislike for her supervisor, Mr. Henderson. She set out to make things as unpleasant for him as possible. She did this by her treatment of Mr. Henderson and also by disrupting the operation of the small department where they were both employed. Her goal, as she put it to a fellow employee, was that "either he or I are going to end up seeing the psychiatrist

and it is not going to be me" (Tr. 627). She also confided to a fellow employee her belief that her supervisors "did not dare" to fire her (Tr. 618). Ultimately the Company did terminate Mrs. Goodyear's employment because her attitude and antics made it impossible to keep her as an employee. Again, her replacement was a woman.

Motion to Maintain the Case as a Class Action

At a "status call" (this case having been on file about eight months) court and counsel discussed the mechanics of determining whether there should be a class action. The court set a date for an informal conference and suggest that in the meantime plaintiff's counsel provide the court a written statement clarifying their theory and the extent of the relief they requested. The court disclosed his familiarity with pertinent decisions, and expressly referred to the *White* case, cited to this Court by petitioner (pet. 11) as setting out the proper criteria for class actions. (Reporter's Transcript, proceedings on December 1, 1971, Courtroom B)

Petitioner never saw fit to furnish the statement requested by the court, but following the status call and in advance of the informal conference counsel tendered a new complaint.

In their motion of tender counsel stated "This amended second complaint is the result of intensive and exhaustive review of plaintiff's case" (R. 86). At the informal conference plaintiff's counsel gave his idea of the standards to justify a class action as follows: "What proves that discrimination is when you have got 7,000 employees and 3,500 of them being women and 3,500 of them in the lower paying jobs. I will bet, and I think we can prove

that some of those are qualified for higher paying jobs and would have them if it wasn't for a sexist policy." Counsel's idea of how to "prove that" was to have the company compile answers to forty-nine interrogatories which he had just filed calling for an estimated 2,800,000 items of information. Interrogatory No. 11 (R. 97), for instance, asked: "11. List by job title and date, each permanent vacancy which existed within each job classification or pay group . . . on each day between July 2, 1965 and the present."

The result of the informal conference was that the court considered the tendered complaint to be vulnerable, granted leave to file another complaint ". . . following the mandate of Rule 8 of the Federal Rules of Civil Procedure that the pleadings should set forth a short and plain statement of the claim showing that the pleader is entitled to relief." The court expected a complaint ". . . with considerable brevity . . . one count reflecting counsel's position regarding the Court considering this as a class action. Likewise on that same date, a motion setting forth in more detail why the Court should consider this as a class action, and a brief in support thereof." The court asked "that the attorneys in this case pay particular attention in their briefs to the requirement for class actions as specified in Rule 23 in regard to defining the class which is alleged here, and no doubt will be alleged with some brevity in the Second Amended Complaint, the commonality of the questions of fact and law involved, typicality of the claims alleged by the plaintiff, the adequacy of the plaintiff's representation of the class."

Regarding discovery the court stated ". . . if you have certain areas that you feel this Court should consider, I think that counsel may assert those as your intention to make an offer of proof at the appropriate time . . . The Court is considering that more detailed discovery may or may not substantiate those, but at least this is your position

at this time on the class action question. You may assume that the Court will consider that as being the truth for the purposes of this class action . . . The Court . . . doesn't have to have a great body of discovery, you understand, because the Court is going to take some of your observations as about what you feel the evidence, the evidence will indicate. However, I don't want to assume the position, or the posture of the case, that 'Let's make the allegations and see where they land and see if the defendant could extricate himself from this position.' " (Reporter's Transcript, proceedings on February 25, 1972, Courtroom B)

Plaintiff tendered a revised Second Amended Complaint (R. 119), a motion for class action and brief in support. The complaint was largely a rehash of the previous complaints, and entirely ignored the court's desire for short and plain statements of the claims and a separation of the matters specifically relating to Mrs. Goodyear from matters advanced to support a class action. After consideration of the written arguments of each party the court notified counsel that he would deny the motion for class action and directed them to prepare a form of order denying the motion and reserving jurisdiction to reopen should future developments so indicate. The final form of order, as signed by the judge (R. 164), was typed by plaintiff's counsel and is endorsed by counsel for plaintiff "no objection as to form".

There was a pretrial conference and a pretrial order was entered (R. 180). One paragraph of the pretrial order incorporated the previous determination that the case not be maintained as a class action and reserved jurisdiction to the court to alter its ruling should it appear appropriate. The form of the pretrial order was approved and signed by the attorneys for each side before it was submitted to the judge for signature.

After the entry of the pretrial order and when the case had been pending for about two years the plaintiff

filed a "Motion to Reopen the Court's Determination of the Class" (R. 254). Attached was an affidavit of one Delores Cleveland, formerly employed in "Central Files", relating her disappointment some years before when her supervisor (female) was transferred and the vacancy was filled by a "twenty-four year old male trainee" rather than by Ms. Cleveland: "Irene told me that Dom Costa informed her that they wanted a man in that job."

Except for the affidavit, the motion to reopen did not purport to advise the court of any new information, or of any information for that matter. On the contrary the motion stated that "upon information and belief" plaintiff had "alleged" in her complaint "and now realleges", etc., etc.

The motion represented that "new amendments to Title VII passed March 24, 1972 clearly place responsibility on the trial court to explore employment practices as alleged by plaintiff in the broadest possible sense. Section 706(g) Equal Employment Opportunity Act of 1972, P.L. 92-261, 86 Stat 103." Defendant filed a memorandum which, *inter alia* set forth the cited amendment (R. 259). The amendment inserted a two-year limitation on back pay; it contained nothing to justify the assertions in plaintiff's motion.

The court denied the motion to reopen.

At the trial plaintiff moved to expand the case to a class action. This appears in the transcript at page 326: "I would just like to make the record, Your Honor, that we would ask at this time that we feel the Court has heard testimony that would indicate that this is, and should be properly maintained as a class action of Rule 23(b)(2), and the only evidence I want to cite to the Court, and the Court has heard, is, first of all, the statistical evidence which came into the Interrogatories and through Mr. Busch's testimony, which indicates that almost, if not all, of the higher salaried, higher "responsible jobs" held at Gates are held by women

and not men, and that almost, if not all, of the secretarial jobs are held by women. In addition to that, the test that was given to Mrs. Goodyear was given to all women applicants for employment during a long period of time, and that, according to the Gates Rubber Company's own testimony and their own Answers to the Interrogatories, the feminine score had no bearing whatsoever to any particular job, and also had no — was used according to the Answer to Interrogatory Number 14 to judge as a means, as a partial means of judging, whether an employee should be promoted and transferred. We feel that this clearly indicates that it is proper for the Court to reopen the class under Rule 23(c)(1). In addition, the Court has heard evidence of Mrs. Hannah Taylor, who is another woman who is a secretary with a college degree, who was, in fact, doing a man's job, receiving a woman's or secretarial's pay, and there is also evidence in the file, the evidence that Delores Cleveland, pursuant to a rule of Judge Arraj with *Taylor v. Safeway,* that we feel the Court has heard additional evidence at this time which would justify reopening the class, and we would so make that request under Rule 23(c)(1). . . THE COURT: . . . But, additionally, if this Court does have the power and authority at the trial to make a de novo determination of the motion which Judge Finesilver has denied, the Court, from the evidence presently before it, would be compelled to determine that this is not a proper place or proper action for maintenance as a class action, and assuming that the Court has the authority to make a de novo determination after hearing the Plaintiff's evidence, that motion just made by Mr. Bender is denied."

ARGUMENT

I.

WHEN THE TRIAL JUDGE, ACTING WITHIN HIS SOUND DISCRETION, DENIED THE MOTION FOR A CLASS ACTION HE WAS NOT REQUIRED TO COMPOSE AN EXCULPATORY ESSAY JUSTIFYING HIS EXERCISE OF DISCRETION.

A. *It is a universally accepted practice that trial courts do and should deny motions without delivering an accompanying opinion.*

Decisions on motions are different from decisions at the close of a trial. Motions raise narrower issues. The judge and counsel more or less kick the matter around before the motion is decided. The trial lawyer is always alert to sense the judge's view and generally knows why the judge granted or denied a motion, whether or not the judge "articulates". If he is mystified he can always ask for enlightment.

There are many more motions than there are cases. In this case the record shows twenty motions. Trial courts are overburdened already. If they are required to issue opinions every time they act on a motion their work will be multiplied to unmanageable volume.

Under the Rules exculpation is unecessary. Rule 23(a) speaks of findings but only as a condition precedent to granting a motion, the obvious reason being that granting a motion for a class action involves serious consequences, 3B Moore, *Federal Practice,* §23.02-2. One such serious consequence is that the defendant is put to enormous trouble and expense — exactly the motive of plaintiff in this case.

Present Rule 23 is, of course, the result of 1966 Amendments. When it was decided to change the Rules in 1966 no change was made in Rule 52, which still provides that (with

exceptions not here pertinent) "Findings of Fact and Conclusions of Law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion. . ."

Under the general and accepted practice when a court decides to deny relief which it has the discretion to grant or withhold it simply issues an order denying the application for the relief. On review the question is not whether the lower court artfully articulated its decision but whether the appealing party can show an abuse of discretion. The appellate court affirms if the record discloses adequate grounds on which the lower court could have correctly decided; it does not require the lower court to prove its mental processes. A recent example of this accepted and up to now unquestioned practice is *National Association for the Advancement of Colored People v. New York,* 413 U.S. 345. It is fairly elementary that lower courts are presumed to do their duty, *Doe, ex dem. Farmer's Heirs v. Eslava,* 9 Howard 421, 444 (1850), and that the Supreme Court "must presume the ruling of the court to be right, in the absence of anything showing it to be wrong", *Leftwitch v. Lecanue,* 4 Wallace 187 (1867).

B. *The District Court clearly followed the proper criteria.*

Petitioner professes worry over whether the district court was guided by the proper criteria as illustrated by *White v. Gates Rubber Co.,* 53 F.R.D. 412 (pet. 11) and other cases.

Petitioner took no initiative to get a determination regarding class action. The initiative came from the status call and the informal conference, at both of which the court displayed familiarity with the pertinent considerations, mentioning the *White* case by name, reminding counsel of the various elements required for a showing under Rule 23 and suggesting an easy method for plaintiff to handle the evidentiary aspects of such showing.

All of which were disregarded by petitioner when she moved for a class action.

When, after an "intensive and exhaustive review of plaintiff's case", plus two years of preparation, investigation and discovery, and eleven years' experience with Gates and opportunity to observe its operations from the inside, petitioner based her motion to reopen merely on allegations "upon information and belief" and relied on a supposed but non-existent amendment of the law, the court was not provided with any reason to reopen and there was no occasion to write a treatise.

What would petitioner have the court do — make a written pronouncement telling the plaintiff "You have not given me any grounds for reopening"? Denying the motion said exactly that.

Subsequently, during the trial, when counsel moved for a class action the trial judge did give reasons for the denial (Tr. 328).

C. *If the petitioner thought there should be more "articulation" she should have said so.*

Counsel are supposed to be officers of the court and should help the court, not come up with exaggerated afterthoughts. If actually left adrift with no guiding star counsel could have:

moved for reconsideration;

asked for a meeting with the judge;

asked the court to include the desired articulation in the written order denying their motion;

included the lack of articulation as one of the grounds of their motions to reopen, or when the motion was made during the trial;

asked the court to include the articulation in the pretrial order;

moved for new trial; or

moved the court of appeals for rehearing.

Instead counsel stipulated to the form of order denying the motion for class action, stipulated to the pretrial order, did not bother to tender any findings of fact or conclusions of law or to move for new trial or for rehearing.

If present counsel harbor doubts about the trial it is because they were not there and have not taken the trouble to find out what went on; and they should not presume to criticize the district court which gave plaintiff's case painstaking and careful consideration.

D. *There is no basis for considering a class action.*

According to petitioner's argument every business in the United States is prima facie guilty of discrimination, as it is a fact that men generally hold most of the higher paying jobs in government and business in the United States. *U.S. Bureau of the Census, Census of Population: 1970 Detailed Characteristics, Report PC(1)-D1 U. S. Summary, Report PC(1)-D7 Colorado*

The lower courts have uniformly held that if you want to go on an imbalance the inquiry is directed to the comparative numbers of available and qualified people, not just the number of bodies. *Frocht v. Olin Corp.*, 344 F.Supp. 369 (S.D.Ind.); *McAdory v. Scientific Research Instrument Inc.*, 355 F.Supp. 468 (D.Md.); *Logan v. General Fire Proofing Co.*, 5 E.P.D. ¶8012 (D.N.C.); *Sidberry v. Stage Employees (IATSE), Local 307*, 5 E.P.D. ¶7976 (D.Pa.)

The rule of these cases was approved by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, which stresses the importance of qualifications, using the word "qualified" or "qualifications" four times in a single paragraph of the opinion (411 U.S. at 802).

Petitioner, after a trial which took a week, now as be-

fore has no facts and relies on mere unsupported allegations. Anyone is free to make allegations. Therefore, under petitioner's theory, it is no problem to allege oneself into Rule 23:

> You start with a female plaintiff.
>
> She selects a large class, thereby taking care of numerosity: "Petitioner seeks to represent all present and former female employees who have been employed by the respondent since July, 1965." (pet. 9).
>
> She makes a general allegation of discrimination against women, which takes care of all other requirements of Rule 23(a) and Rule 23(b)(2): "The allegation which applies to all members of the class is that the respondent has denied equal employment opportunity to women." (pet. 10). "Such 'across-the-board' allegations of employment discrimination are sufficient to meet the requirement of common questions of law or fact of Rule 23(a)(2)." (pet. 10)
>
> She represents the class, since all have women's interests and it makes no difference that she herself does not have a case (pet. 11).

If petitioner is correct then any woman can at any time file a boiler plate complaint and maintain a class action with herself as private attorney general.

In none of the cases which petitioner cites for the proper application of Rule 23(a) and (b) (pet. 8) did the court rule for a class action on the strength of mere allegations. In each case the pertinent facts indicating the type of wrong and the scope of the class were established by affidavits, discovery, a detailed S.E.C. study, evidentiary hearings or otherwise.

City of New York v. International Pipe, 410 F.2d 295 (2d Cir.) stresses the trial court's breadth of discretion which should be exercised "in the light of the particular facts present" (410 F.2d at 300).

II.

THE DISTRICT COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUPPORTED BY THE EVIDENCE

The trial court heard out petitioner at great length: she got to tell everything she had on her mind or could show by others excepting only her claim that she went to bed with the boss one night in a private apartment; on her (and his) own time, outside of working hours.

How that evidence bears on a Title VII case has never been suggested.

The legal principles applicable to the facts as found by the trial judge are too clear for argument. His findings are massively supported by the evidence. See our annotations to the findings, attached as Appendix 1.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

Dayton Denious
Attorney for Respondent
2220 First National Bank Building
621 Seventeenth Street
Denver, Colorado 80202

APPENDIX 1

Esther Goodyear v. The Gates Rubber Company

District Court's

FINDINGS OF FACT

Transcript References	
19	1. The plaintiff is a high school graduate and except for some instruction in typing and secretarial work, she had no further formal education prior to her employment by the defendant.
242 243	2. Prior to her employment by the defendant, plaintiff was employed for a period of three years as a waitress, approximately two years as a bookkeeper, and for approximately one year as a bookkeeping machine operator.
23 243 464-465	3. In 1960, plaintiff applied to defendant for employment and was employed by the defendant in a clerical capacity and she was thereafter continuously employed by defendant until her discharge in April of 1971.
24 25 26 230	From May of 1963, until October 1969, she was employed in the Industrial Belt Sales Division of the Company as a secretary. Her supervisor was a Mr. Stetson, who was later succeeded by Mr. Custer, who continued to be her supervisor until she left that Department in October 1969.
260-262 267-271 460 461	4. Becoming dissatisfied with the lack of opportunity for advancement in the Industrial Belt Sales Department, in 1969 she requested a transfer to another division. In

Transcript References	
	late 1969, she was offered and accepted a position in the Private Brands Sales Department whose manager was Mr. Kenney. This new position was a promotion in classification and a small increase in pay.
127 130-134 139 271 404 406 411-415 432-436 442-455	The plaintiff's position with the Private Brand Sales Department had previously been performed by one Maryln Jones, who was promoted, thus creating the vacancy filled by the plaintiff. Maryln Jones was assigned by Mr. Kenney to train the plaintiff in her new position. Although the plaintiff had the technical skills to do the work required, she did not perform the work adequately or satisfactorily.
296 413 414-415	Mr. Kenney notified the plaintiff that because of her failure to perform her work in a satisfactory manner that it would be necessary for him to dispense with her services effective April 30, 1970, and that she should, in the meantime, locate another position of employment with the company.
130-132 295 415 445-455	Whether her failure to perform was due to lack of proper training by Miss Jones or a lack of interest or a refusal on the part of the plaintiff to accept training, was the subject of conflicting evidence, but there is no evidence that she was replaced because she was a female.
295 405 413-414	The vacancy created by the termination of the plaintiff's employment with the Private Brands Sales Department was filled by

Transcript References

another female who performed the work in a satisfactory manner.

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5. The plaintiff's availability for other employment within the company was circulated to other departments, and a few interviews were granted, but none of the departments who had vacancies to be filled equal to the plaintiff's classification were willing to employ her. The refusal of these department managers was in no way influenced by the fact that the plaintiff was a female and there is no evidence that any of these positions were filled by other than female employees.

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Ptf Ex. 5

6. On April 30, 1970, the day on which plaintiff's employment with Mr. Kenney expired, the plaintiff was notified of a vacancy in the MRG Technical Department of which Claude Henderson was the supervisor. The classification of the position was "Steno A" a lower-rated job and one which paid less than the secretarial position which plaintiff held in Mr. Kenney's department. The plaintiff accepted this position and was employed in that position from May 1, 1970, until her termination on April 16, 1971.

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7. Shortly after she took this position, the plaintiff evidenced an extreme dislike for and hostility toward Mr. Henderson, the Manager of that department and engaged in a course of conduct which disrupted the operation of the department and the morale

Transcript References

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636-640

of the employees. This conduct included the generation of arguments with fellow employees, sarcastic comments directed to Mr. Henderson and fellow employees, hostile and antagonistic attitudes toward them and a non-cooperative attitude in carrying out her duties.

Def Ex J
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This conduct so affected the efficiency and morale of the department that Mr. Henderson's superior, Mr. Redmond, in August 1970, required reports from Mr. Henderson as to the plaintiff's attitude and activities. Exhibit J contains the notes kept by Mr. Henderson of plaintiff's conduct and these notes were the basis for Mr. Henderson's reports to Mr. Redmond.

Page 4
Pretrial
Order
(R 180)

On or about November 9, 1970, the plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission. In this claim she stated:

> "The company discriminates against women by placing them into lower job classifications, by denying them promotional opportunities in a similar manner as those opportunities offered to male employees, and by imposing different terms, conditions and privileges of employment. I have been recently demoted and have not been given job advancement opportunities because I am female."

Transcript References

Undisputed — Thereafter, the plaintiff received from the Commission, a notice of her right to bring suit in the United States District Court and this action was instituted accordingly on March 10, 1971.

180, 184, 187, 534, 535, 536, 538, 630, 634-635, 640-642, 660-661 — At the time Mr. Redmond arrived at his decision to terminate the plaintiff's employment, neither he nor Mr. Henderson were aware of the fact that the plaintiff had filed charges with the Equal Employment Opportunity Commission and Mr. Redmond's decision to terminate the plaintiff was made prior to the filing of this action.

121, 139, 543, 544, 666 — The Court finds that the decision to terminate plaintiff's employment was not, either in whole or in part, in retaliation for the plaintiff's filing charges with the Commission and the institution of this action.

234, 235, 236, 237-242, 464-470 — 8. The evidence fails to show any occasion when the company had an opening for employment in a position for which plaintiff was qualified and which was a better position than that held by her and which the company denied to her because she was female.

136, 156, 202, 215-221, 226-228 — 9. Plaintiff testified to a number of matters such as work breaks, with respect to which she alleged she had been treated unfairly. In most instances, her testimony did not fix the dates when the alleged wrongs occurred and in all such cases, her claim was only that she as an individual had not been

Transcript References

treated fairly and not that she had been so treated because she was a female.

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10. Plaintiff complained of a psychological test administered to her in 1969 which purported to measure a number of qualities including "feminity". There is no evidence that this test was used to the prejudice of females as a class or that it ever operated to the prejudice of plaintiff.

11. The evidence does not sustain any claim upon which the plaintiff is entitled to relief.

12. There was introduced into evidence proceedings before the Industrial Commission of the State of Colorado adjudicating a claim of the plaintiff after her discharge for unemployment compensation benefits. These proceedings were offered by the defendant on the theory that the findings of the Commission of the reasons why the plaintiff was discharged by the defendant are binding on this Court in this proceeding. The tender for this purpose is refused and this Court determines that the findings of the Industrial Commission in this respect are not binding on this Court and are not proper evidence to be considered by this Court. The Court therefore has arrived at its Findings of Fact from evidence other than the findings of the Industrial Commission and these findings have been entirely disregarded by the Court.